

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CLAUDE SLEDGE, III, )  
Plaintiff, ) 4:06cv3011  
vs. ) ORDER  
GARY LACY, et al., ) ON INITIAL REVIEW  
Defendants. )

This matter is before the court for initial review of the complaint filed by the plaintiff, Claude Sledge, III, a prisoner in the custody of the Lancaster County Jail. The plaintiff asserts federal civil rights claims pursuant to 42 U.S.C. § 1983 against a prosecutor, two attorneys and a police officer who were involved in a previous criminal prosecution of the plaintiff. In the previous case, the plaintiff spent over seven months in prison but then prevailed on appeal.

This case is assigned to the docket of Senior Judge Lyle E. Strom. However, a Magistrate Judge may conduct initial review. Having reviewed the complaint, I question whether the two attorneys named as defendants acted "under color of state law" as is required for a cause of action founded on 42 U.S.C. § 1983. I also consider it likely that the prosecutor is shielded by absolute prosecutorial immunity from liability to the plaintiff. However, the defendants may raise those issues and provide more details, and thus, this case will not be dismissed on initial review.

Therefore, as initial review of the complaint is now completed, it is time for the plaintiff to undertake service of process on the defendants, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendants, after the plaintiff completes the appropriate forms.

IT IS THEREFORE ORDERED:

1. To obtain service of process, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall send FOUR summons forms and FOUR Form 285s to the plaintiff together with a copy of this order.

2. The plaintiff shall, as soon as possible, send the completed summons and 285 forms back to the Clerk of Court. In the absence of the completed forms, service of process cannot occur.

3. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal

for service of process. The court will copy the complaint for the Marshal.

4. The Marshal shall serve each summons and complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.

5. Fed. R. Civ. P. 4 requires service of the complaint on a defendant within 120 days of filing the complaint. However, because in this order the plaintiff is informed for the first time of these requirements, the plaintiff is granted, on the court's own motion, an extension of time until 90 days from the date of this order to complete service of process. The plaintiff is hereby notified that failure to obtain service on a defendant within 90 days of the date of this order may result in dismissal of this matter without further notice as to such defendant.

6. If service has been obtained on no defendant by the deadline set forth above, the Clerk of Court shall bring this case to the attention of the court.

7. After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies of documents on other parties by first class mail.

8. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the defendants or to the attorney of any represented defendant. To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

9. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

10. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court.

11. The plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

DATED this 31<sup>st</sup> day of March, 2006.

BY THE COURT:

s/ F. A. GOSSETT  
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285  
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A form USM-285 ("form 285") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Do not copy your complaint to attach to the summons; the court will do that for you.
4. You may serve only defendant(s) named in the case caption of the complaint. If you want to serve additional defendant(s), you must move for leave to amend the complaint to add the additional defendant(s) to the case caption.
5. Be sure to print your case number on all forms.
6. You must give an address for the party to be served. The U.S. Marshal will not know a defendant's address.
7. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
8. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
9. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
10. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.